

Statement of PPL Montana
Before the Judiciary Committee
Of the Montana State Senate
Regarding Senate Bill No. 435

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Mr. Chairman and members of the Committee:

My name is Holly Franz. I represent PPL Montana. In light of the serious concerns presented by SB 435, PPL Montana opposes this bill.

Water rights are valuable property rights. The drafters of Montana's 1972 Constitution included a specific provision recognizing and preserving their validity – Article IX, §3 states that “all existing rights to the use of any waters for any useful or beneficial purposes are hereby recognized and confirmed.” SB 435 directly violates this constitutional mandate by subordinating the priority dates of one class of water rights in favor of all other classes. Such an unprecedented attempt to extinguish vested property rights is ill-advised for several reasons.

Irrespective of SB 435's clear constitutional deficiencies as a matter of principle, the legislature should not be in the business of retroactively modifying vested property rights. For this reason alone, SB 435 should be rejected.

In addition, SB 435 sets a dangerous precedent that cannot be ignored. Today it's the priority dates of a select group of water rights owners. Whose property rights will be targeted for modification or elimination tomorrow – irrigation, instream flow or even rights for personal consumption?

Although no fiscal note has yet been prepared, this Committee should not ignore the State's potential liability under this bill. A water right's value is determined primarily by its priority date. The subordination of existing priority dates will substantially reduce the value of the affected water rights. A reduction in value of this magnitude will certainly result in Fifth Amendment takings claims against the State.

Finally, the adjudicatory requirements of this bill are both burdensome and unworkable for the Water Court. Under SB 435, the Water Court must reopen decrees and assign new priority dates for previously adjudicated water rights. As this body has already determined, the Water Court's limited resources are better used elsewhere.

For these reasons, I urge the Committee to reject SB 435.